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BEFORE THE

Federal Communications CommissionFEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20554

In the Matter of:

Amendment of the Commission's
Rules to Establish New Personal
Communications ServicesGEN Docket No. 90-314
RM-7140, RM-7175, RM-7618

To: The Commission

**REPLY OF TIME WARNER TELECOMMUNICATIONS TO
OPPOSITIONS TO PETITIONS FOR RECONSIDERATION**

Time Warner Telecommunications ("TWT"), by its attorneys and pursuant to Section 1.429(g) of the Commission's rules, hereby submits its reply to certain oppositions to petitions for reconsideration of the Commission's Second Report and Order in the above-captioned proceeding.¹

DISCUSSION

As the difficult and often contentious process of setting the rules that will govern Personal Communications Service ("PCS") finally comes to a close, TWT again voices its support for the Commission's aggressive efforts to bring economically viable PCS to the public. Many important and complex issues were

¹Second Report and Order in GEN Docket No. 90-314, 58 Fed. Reg. 59174 (1993). On December 8, 1993, TWT filed a Petition for Partial Reconsideration of this decision. See Petition for Partial Reconsideration ("TWT Reconsideration Petition").

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raised, discussed and resolved in the Commission's Second Report and Order. As a result, a strong foundation has been set which will hopefully enable PCS to flourish in the coming years.

Based on the rules recently adopted by the Commission, potential PCS operators have been formulating business plans, negotiating deals and developing auction strategies. In light of this activity and the Commission statutory mandate to implement PCS in an expeditious manner, the Commission should quickly resolve the pending Petitions for Reconsideration and avoid making any radical changes to its rules at this late date. Instead, all that remains is for the Commission to make a few minor adjustments to the rules and policies adopted in its Second Report and Order to help ensure the rapid introduction of a low cost, consumer oriented PCS that will vigorously compete in the land mobile communications marketplace.

I. The Commission Should Clarify Its Aggregation Rules To Expressly Authorize Spectrum Partitioning

Throughout this proceeding, TWT has firmly maintained the position that commercially viable PCS will require at least 40 MHz of spectrum per licensee.² In its Reconsideration Petition, TWT offered two alternatives to achieve this result: (1) change the allocation scheme to directly license 40 MHz spectrum blocks to each licensee, or (2) permit spectrum partitioning to allow

²See Comments of Time Warner Telecommunications (filed November 9, 1992) ("TWT Comments"); Reply Comments of Time Warner Telecommunications (filed January 8, 1993) ("TWT Reply Comments"); TWT Reconsideration Petition.

more meaningful aggregation within the lower band.³ While both of these alternatives received attention from numerous parties, TWT will focus on spectrum partitioning in this Reply.

The Commission's rules make it theoretically possible for a licensee to accumulate 40 MHz of spectrum through aggregation. However, as TWT noted in its Petition for Reconsideration,⁴ there exists serious doubt under the current rules as to the ultimate success of aggregation in achieving the Commission's goal of "accommodat[ing] licensees requiring more than 30 or 20 MHz to provide the full range of services they envision."⁵ This concern stems, in large part, from the disparate frequency separation among the frequency blocks in the upper and lower bands.⁶

As the Commission is aware, these frequency separation differences create technical difficulties that make it extremely expensive to aggregate across bands. Moreover, equipment manufacturers have yet to develop dual band equipment capable of providing seamless service to PCS subscribers. Thus, for all practical purposes, aggregation is impossible in the near term and is not a viable alternative for licensees in the lower band who seek to obtain 40 MHz of spectrum in a market. Yet, under

³See TWT Reconsideration Petition at 2.

⁴See Id. at 8-11.

⁵Second Report and Order at ¶62.

⁶In the lower band (including blocks A, B and C), a frequency separation of 80 MHz is required; in the upper band (including blocks D, E, F and G), the required separation is just 50 MHz. See 47 C.F.R. § 99.202.

the current rules, cross band aggregation is the only way for these licensees to reach the permitted level of 40 MHz of spectrum.⁷

Overcoming this hurdle, however, can be easily achieved by permitting licensees in the lower band to partition their spectrum. As TWT suggested in its Reconsideration Petition, this can be done by subleasing, entering into joint ventures or consortia, or otherwise engaging in flexible spectrum use.⁸ Partitioning will allow licensees to aggregate spectrum within the lower band and avoid the vexing frequency separation problems detailed above. This will help move low cost, mass market PCS that much closer to reality.

Like TWT, a number of other Petitioners also suggested spectrum partitioning. For example, PCS Action specifically proposed that designated entities holding licenses in the C block be permitted to divide their spectrum into two 10 MHz blocks and sublicense these blocks to the 30 MHz licensees.⁹ Importantly, spectrum partitioning will permit designated entities (i.e., C block licensees) to realize greater economic opportunity by enabling them to work with 30 MHz licensees. As noted by McCaw, "assurances that operating authority may be subdivided may

⁷The Commission readily acknowledged: "We realize that licensees in the lower band ... will be required to aggregate with the 10 MHz frequency blocks of the higher band if their systems require more than 30 or 20 MHz." Second Report and Order at ¶62.

⁸TWT Reconsideration Petition at 10.

⁹See PCS Action Petition at 2-12 (filed December 3, 1993).

enhance the participation of a wider diversity of designated entities, who are assured that they will be able to devote resources to a smaller service area or a tailored niche opportunity."¹⁰ Without question, permitting spectrum partitioning will better position designated entities to fully and successfully participate in PCS, consistent with the objectives articulated by the Commission and by Congress.¹¹

Strong support for spectrum partitioning was also offered by Telocator, which cited with approval the Reconsideration Petitions of both TWT and PCS Action: Telocator endorsed this spectrum partitioning because it is consistent with its general philosophy of supporting market driven initiatives.¹² Similarly, McCaw also endorsed the concept of flexible spectrum use as proposed by TWT.¹³

¹⁰Comments of McCaw Cellular Communications, Inc. at 23 (filed January 3, 1994) ("McCaw Comments").

¹¹Congress directed "the Commission to ensure that small businesses, rural telcos, and businesses owned by women and minorities are 'given the opportunity to participate' in the provision of spectrum-based services. Congress's objective was apparently to promote economic opportunity for the entities enumerated in the statute." Implementation of Section 309(j) of the Communications Act, Competitive Bidding, Notice of Proposed Rulemaking in PP Docket No. 93-253 (rel. Oct. 12, 1993) at ¶72.

¹²Comments of Telocator at 7 (filed January 3, 1994) ("Telocator Comments").

¹³See McCaw Comments at 21. One of the few parties expressing opposition to spectrum partitioning was Nextel Communications, Inc. ("Nextel"), whose Opposition included a section titled: "The Commission Should Not Permit Subdivision Of Service Areas Or Of Spectrum." See Nextel's Opposition to Petitions For Reconsideration at 13 (filed December 30, 1993) ("Nextel Opposition"). However, a careful review of Nextel's
(continued...)

In sum, adopting a policy of spectral flexibility would give life to the Commission's aggregation rules, increase economic opportunity for designated entities, and facilitate the rapid deployment of low cost PCS. For these reasons, TWT urges the Commission to expressly authorize such an approach.

II. Cellular Eligibility Rules Should Be Maintained As Written And Applied To ESMR Operators

TWT supports the Commission's effort to restrict the eligibility of cellular providers to become PCS licensees by establishing ownership and attribution rules.¹⁴ The Commission's cellular eligibility rules strike an appropriate balance between protecting the public (and potential PCS competitors) from anti-competitive behavior, while still permitting experienced wireless communications operators to participate in the provision of PCS. To the extent various Petitions seek to disrupt this balance with respect to cellular service providers, such recommendations should be rejected and the current rules maintained.

TWT submits, however, that the Commission's rationale for imposing eligibility restrictions on cellular service providers requires that these restrictions also be placed on providers of

¹³(...continued)
pleading reveals that its actual argument addresses issues relating to geographic subdivision only; Nextel did not offer a single reason why the Commission should not allow licensees to subdivide spectrum.

¹⁴See 47 C.F.R. § 99.204.

enhanced specialized mobile radio ("ESMR") service.¹⁵ Similar arguments were made by BellSouth and U.S. West.¹⁶

It is clear from the Commission's discussion of the cellular eligibility issue in this docket that its concern is directed toward (1) avoiding anticompetitive situations that may result where one service provider holds a significant ownership interest in a competing service provider, and (2) affirmatively developing a pro-competitive environment. ESMR service providers have sufficient spectrum to compete directly with cellular and to provide PCS type services. Indeed, Nextel has publicly stated that "it essentially will use [its] digital cellular network to provide personal communications services",¹⁷ and "[w]e have all the characteristics of PCS, but in the 800 MHz band."¹⁸ Thus,

¹⁵It is likely that cellular and ESMR operators will both be classified as commercial mobile services ("CMS") and will therefore be subject to identical regulatory treatment. The Commission has announced: "In general, we believe that wide-area SMR service should be ... classified as commercial mobile service" See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Notice of Proposed Rulemaking, at ¶36 (rel. October 8, 1993). See also "Petition For Special Relief Concerning Enhanced Specialized Mobile Radio Applications And Authorizations" (filed December 22, 1993 by Bell Atlantic Mobile Systems).

¹⁶US West Petition for Expedited Partial Reconsideration and for Clarification filed in Gen. Docket No. 90-314, December 8, 1993 at pp.16-22; Petition for Reconsideration filed by BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Cellular Corp. in Gen Docket No. 90-314, December 8, 1993 at pp.11-14.

¹⁷A. Lindstrom, Nextel Introduces First U.S. Digital Network Based on GSM, Communications Week at 47 (October 4, 1993).

¹⁸Fleet Call Reply at 6 (filed January 8, 1993).

allowing ESMR service providers to have significant ownership participation in PCS licensees within their own service areas does not introduce a new competitor or provide additional competition.¹⁹ Rather, it further limits the competitiveness of the marketplace. As such, fairness dictates that ESMR service providers be subject to the same restrictions as cellular operators.

CONCLUSION

TWT urges the Commission to expressly authorize the partitioning or leasing of spectrum to enable licensees of either 30 MHz block to utilize up to 10 MHz of spectrum from the 20 MHz block licensee. Aggregating within the lower band would avoid technical difficulties and unnecessary cost, increase economic opportunity for designated entities, and go a long way toward ensuring that PCS will fulfill its role as a low-cost, mass

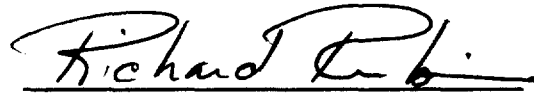
¹⁹Nextel has also stated: "We are leapfrogging cellular to become the first wireless operator to offer integrated services." Nextel Strikes Again," Land Mobile Radio News, Vol. 47, No. 44 at 2 (Nov. 12, 1993).

market service. In addition, the Commission should not only maintain its carefully balanced rules regarding cellular eligibility in PCS, but extend these rules to include ESMR providers.

Respectfully submitted,

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